IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 232 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

NAVJIVAN ROLLER FLOUR AND PULSE MILLS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 232 of 1994
MR MIHIR H JOSHI with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion in respect of assessment years 1981-82 to 1985-86 :-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that provisions of section 40A(8) would not be applicable on the current accounts of the Directors, their relatives and friends ?"

2. We have heard Mr Mihir H Joshi, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention is invited to the decision of this Court in the case of this very assessee for assessment years 1978-79 and 1979-80 being Income-tax Reference No. 247 of 1984 decided on 3.5.1999 which is also reported in (2001) 165 CTR 612. In the said decision, this Court has held that the word `deposit' as defined in Explanation (b) is wide enough to obliterate distinction between deposit and loan and it encompasses all kinds of deposits of money of any nature. Except to the extent exclusion has been provided, the term `deposit' has been used in its widest possible meaning. Accordingly, interest paid on credit balances of current accounts standing in the names of directors, shareholders and other persons is disallowable under Section 40A(8) of the Income-tax Act, 1961.

4. Following the aforesaid decision, our answer to the question is in the negative i.e. in favour of the revenue and against the assessee.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-